United States Court of Appeals

for the Second Circuit

SUPPLEMENTAL BRIEF

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77-7162

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

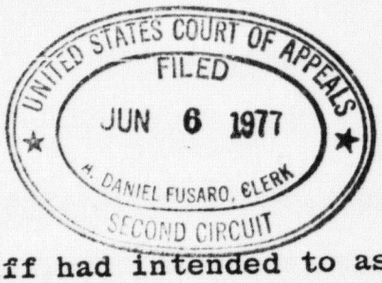
MILLICENT LINDEN, : C/A Docket No. 77 - 7162

PLaintiff-Appellant,

- v - : 76 Civ. 4403; Judge Duffy

DAVID FOX and SAMUEL GRAFF,

Defendant-Appellee. : SUPPLEMENT



STATE OF NEW YORK: COUNTY OF NEW YORK: S.S.:

Dear Sirs:

In the previous submissions, plaintiff had intended to ask this Court what had been requested of the court of Judge Duffy in the motion of December, 1976, but had inadvertently left it out of the briefs, and hereby presents it in this supplement and additions.

With the view of providing fullest possible description of the dire nature of the emergency of the time, when the treating doctor justifiably stated he would no longer treat plaintiff, in December, 1976, (noted in the records) having carried plaintiff's treatments without fees for four years, and when, having to do without those life-saving treatments for several weeks and life was ebbing away, plaintiff made a motion before Judge Duffy for a speedy trial, submitting the medical and hospital records in the brief, validating the conditions of the past and the necessity of the then present.

When no reply was forthcoming from Judge Duffy, plaintiff sought to have physical demonstration of the medical, hospital and professional documentation of the reasons for the emergency trial. The physical evidence to have been shown in chambers, rather than in the courtroom, that the circumstances were unprecedented for the combinations of the conditions plaintiff was faced with. But still no reply came from Judge Duffy, though plaintiff wrote two letters after the motion.

In fact, plaintiff's request was never acknowledged by Judge Duffy at any time, not even in his order of dismissal several months after the motion, neither denied nor granted by the silence that ignored it.

Plaintiff has since received treatments by the doctor, the only ones plaintiff found effective after a painstaking search, both painful and hazardous, when the biological struggle for survival prompted plaintiff to resist the innate characteristic that avoided imposition upon others and planted herself upon the doctor's office-door threshold where his professional eye and humanitarian spirit, seeing the threat to life itself, resumed treatments, still unpaid services.

Plaintiff would like to show to this Court the physical reasons and manifestations for the special circumstances of the motion for emergency trial, that in the event of any other curtailment of treatment for any reason until some time when the possibility of at least allowing plaintiff to ambulate without them, let alone any restoration to normality that appears precluded now from the injury done by the defendant-doctor whom defendant-lawyers in the instant action represented, the facts would be on record and would explain the foundation and the validity of plaintiff's request to show the physical evidence of the emergency need.

Though it is understood that this appeal is from Judge Duffy's order that dismissed plaintiff action against defendant-lawyers, that Judge Duffy did deny plaintiff that right to present the facts to the court physically, to present oral argument for those facts, is also an indication of some underlying prejudice against plaintiff's suit against defendant-lawyers. Plaintiff had understood that there are provisions in the law for such states of emergencies that contai a threat to life, that time is of the essence.

The indication of an underlying prejudice is further seen in Judge Duffy's words within the order which read:

> "The actions complained of were such as would be readily apparent on the face of the state court record and would be issues to be raised on appeal, a course which plaintiff has unsuccessfully pursued in the state appellate term."

Nowhere in the record or in any statements made anywhere is there any indication of plaintiff's having pursued "..the actions complained of" against defendant-lawyers. All denials to plaintiff in each and every Court, City and State and Appeals, were based entirely upon the issues surrounding plaintiff's case against the defendant-doctor whom the defendant-lawuers in the instant action repreeented. Plaintiff did try to institute action against defendant lawyers, but no court, not City and not State, would accept or grant plaintiff's request to review the facts of the defendant-lawyers illegal practices that denied plaintiff's right to be heard.

All the violations of the law practiced by defendant-lawyers were ignored by all the courts in the course of court proceedings against defendant-dcotor.

No Constitutional claims were heard in the State Courts on plaintiff's Constitutional rights. It is thought that State courts have a duty to enforce the Constitution, but their record appears to be removed from that duty. History has shown that it is the federal courts that provide an effective forum for protecting constitutional rights. There are no grounds for deference to State courts where there has been no institution of any suit on the basis of civil rights and as plaintiff had no opportunity in the state courts to institute any suit against defendant-lawyers, there is no presence of comity.

That the State courts refused to hear plaintiff on civil rights violations when the evidence was overwhelming os such violations, is

evidence in itself undertaken by the State courts when they obviously tended to deprive plaintiff of the right to be heard on those violations. As there are no state proceedings and never have been, comity can have no application, deference no place, as intimated in Judge Duffy's order erroneously stating that plaintiff had recourse to such state proceedings. Only when state proceedings have been or are instituted, does comity require federal courts to abstain. Alleging unfounded comity denies the plaintiff access to court, thereby denying the Constitutionla right to be heard in redress.

Plaintiff's complaint is not one of "mistakes", or human error, but of deliberate, wilfull intent to deny a Constitutional right. The documented evidence contains more than sufficient proof of such intent.

Yet, Judge Duffy writes in his order: "Defendants have moved to dismiss the complaint for failure to state a claim upon which relief can be graned and for lack of subject matter jurisdiction." Plaintiff has entered a volume of statements of"claim upon which relief can be granted", and the evidence is not vague, and is unarguable. He further writes: "Defendants are the attorneys who represented a physician who plaintiff unsuccessfully sued in state court." But he makes no statement of the facts that plaintiff's lack of success in suing in state court is due solely to the violations of the laws, not only of the Nation, but of the State courts themselves, for is it not a clear-cut violation to submit a court order, alleged order, to strike plaintiff's case from the calendar which the sitting judge in Supreme Court says he never ruled on, and which the Civil Court acknowledged without a hearing on the facts and signed plaintiff's case off the calendar? In addition, when a case is transferred, as the Supreme Court Judge Postel stated, to Civil Court and as is also

known at large, it is like starting all over again in Civil Court, and the Supreme Court order is not binding even if it had been ruled on, as it is expected that the Civil Court judges review the facts and rule on their merits. The evidence shows an unmistakeable, obvious lack of ruling on the merits of the facts as they are contained in the record by any court, Supreme or Civil, with the additional aggravation of Civil Rights in the Civil Court by the sitting judges who deliberately ignored those facts, referring over and over again and again to non-existent orders from the Supreme Court and to the obfious compliances by plaintiff of all demands by defense attorneys and all mandates by those court in Civil Court. These documented facts are covered in the preceding briefs.

What plaintiff wishes to present in this writing is that the complicity required the cooperation of both defense attroneys and the sitting judges against plaintiff in her suit against the defendant doctor. Demands and mandates, lawyers and judges, respectively, formed an overwhelming abuse of power over the solitary plaintiff without any power of any kind but of being an individual practicing the time-honored historical struggle for just such rights of which we have been priveleged to have within our Constitution.

Isn't our Constitution meant ot impose a restraint on the abuse of such power andis it not our most precious heritage of civilization? Plaintiff believes it to be so, and believes that there are and must be safety gauges within court procedures to ensure that precious heritage of which we are the fortunate recipients.

Because of the "understanding", implicit, either in silence or in actions of demands by defense and in granting orders for defense, denying plaintiff everything in sight, between the sitting judges and the defense attorneys, plaintiffcould not succeed at anything,

without justification, and, therefore, was compelled to appeal the issues which involuntarily and automatically involved the courts and the lawyers. The facts embrace all involved, the injury done by the defendant-doctor, whom Judge Duffy referred to as having unsuccessfully sued in state court, the judges who ruled in violation of the facts and their merits, and the lawyers who used the courts for their illegal practices instrumental in denying plaintiff the right to trial.

In effect, therefore, the substances and reasons set forth in argument against each of the aforementioned applies to each, as they are inextricable from each other. Forthis reason, plaintiff annexed a copy of some ofthose arguments which apply to the defendants in previous arguments before this Court to be included in the instant action, and part of the areguments herefofore.

Defendant-lawyers have repeated their insults tothe privileges of our legal-court system too often, knowingly and deliberately. In addition, they have also shown their callousness to another person's physical suffering in aggravating the injury donebyd defendant-doctor they represented by imposing illegal, time-consuming, energy-demanding physical exertions with unwarranted court procedures and demands that called for travelof trips of torment and waiting while muscles were in severe spasm, demanding movements when courts demand sitting still, responding to motions without justification. The evidence is more than plentiful supporting plaintiff's claims and complaints.

WHEREFORE, plaintiff looks to this Court to grant the rightful trial by jury basedupon the facts in the documented record, respectfully AGAINST DEFENDANT-LAWYERS

Dated: May 31, 1977,
New York, N.Y.

Respectfully submitted,
Millicent Linden
Millicent Linden
500 East 74th St. New York, 100

To: EVANS, ORR, PACELLI, NORTON, & LAFFAN
15 Park Row 10038

SWORN TO BEFORE ME THIS 31st day of May 1977

VINCENT AMATO
NOTARY PUBLIC, State of New York
No. 24-0057[illegible]
Qualified in Kings County
Commission Expires March 30, 1979

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Oral Argument

May 27, 1977

MILLICENT LINDEN
- v -
SEYMOUR SCHWARTZ & BERNARD WEISS
Justices of the Civil Court

76 Civ. 4402 Judge C. Stewart

C/A Docket No. 77 - 7022

Cal. No. 1069

MILLICENT LINDEN
- v -
NATHAN NOVICK

76 Civ. 4404 Judge M. Lasker

C/A/ Docket No. 77 - 7038

Cal. No. 1063

MILLICENT LINDEN
v.
DAVID FOX + SAMUEL GRAFF
76 CIV. 4403
JUDGE DUFFY

PLAINTIFF ARGUES TWO CASES SIMULTANEOUSLY; THEY ARE CALENDAR NUMBERS 1063 and 1069 in the titled actions against NATHAN NOVICK, NO. 1063, SEYMOUR SCHWARTZ & BERNARD WEISS, JUSTICES OF THE VIL COURT, No. 1069. DAVID FOX AND SAMUEL GRAFF, LAWYERS (EACH DIRECTLY PERTINENT AND RELATED TO EACH OTHER)

We are here pre present in a court of law; plaintiff appears pro se and is not a lawyer. It is, therefore, self-evident that plaintiff will not and cannot argue on the basis of the law in terms of a lawyer. But the very fact that plaintiff has the privielege and opportunity to argue for one's own behalf and rights is an event of law and a historical privilege to be appreciated in no uncertain terms. Plaintiff, therefore, extends APPRECIATIVE recognition and acknowledgement for that privilege and opportunity to this Court.

The issues plaintiff presents in the briefs and in oral argument

THERE'S NOTHING VAGUE ABOUT THE ISSUES.

come directly under the mandates of our CONSTITUTION. There are no ambiguities, no interpretations accorded in the judicial privilege of discretion and no doubts of the facts in any of the records in either of the titled actions. The issues are self-evident and not arguable. It remains only for justice to be done, for an appeal to just plain human decency and a declaration of conscience.

The records document the facts, and in essence they state that defendant Nathan Novick, an experienced, practicing chiropractor, did wantonly, deliberately and with premeditated malice inflict severe and serious injury upon plaintiff, and does so state under oath in court and duly contained in the transcribed court minutes from his own testimony on the witness stand; defendant-judges, Seymour Schwartz and Bernard Weiss, justices of theCivil Court, did wantonly, deliberately violate the most elementary, fundamental laws of the land and of all the states with premeditated malice, to flout and to flaunt our precious right in our Constitution to be heard on the basis OF THE facts in the records and ON their merits, with such persistent repetition as to add up to a mountain of condemnation.

In each case, we are confronted with what has been termed MENS REA, things of the "mind", "things" that reflect attitude

to display intent to harm, physically and legally, respectively, & PREJUDICE.

In a bewildering array of legal documents and medical and hospital reports, defendants, each of them, respectively, perpetuate the path of compeete disregard of the facts in the reoords with unmistakeable awareness of the life-threatening injuries and gross illegalities.

Defendant-judges saw plaintiff in the midst of physical hardship compelled to endure unwarranted, undue court procedures aggravating the injuries and ~~bnnd~~dening the thin thread of life/further that a severely misalgined pelvis presents.

Defendant-doctor's representative submits IN CIVIL COURT a Supreme Court order that was never ruled on ~~in Civil Court~~ to strike plaintiff's case from the calnedar, PROVEN TO BE SO in A written statement by the sitting court and in court records that held no entry of said court order on the scheduled date of trial, as well as repeated ING AN allege~~r~~ unverified Bill of Particulars that was entered in the county clerk records as verified, not only initally, but repeatedly with each new allegation. And with each new demand for a verified b/o/p, defendant-judges granted defendant-doctor's COUNSEL'S demands while denying plaintiff relief however much compliances had been submitted and re-sbumitte.d

These are but examples; the list of violations by defendant-judges and defendant-doctor's COUNSEL is long, very long, a long 2 years of cruelty meted out to a solitary indi idual with no affiliations or material assets.of any kind.

Plaintiff had been free-lancing as independent researcher, FROM NATURAL SCIENCES peaching, lecturing an original program entitled TENSION-in-REPOSE along with singing and dancing, highly active livlihoods that demand physical vitality, plaintiff's only capital asset. Defendant-doctor was completely aware of these facts and of the potent effectiveness of TENSION-in-REPOSE, of its ability to enhance and develop an unprecedented inner equilibrium. TO HUMAN ANATOMY.

Plaintiff went with trust and faith to defendant-dcotor to treat a trauma to the jaw, referred by a T-in-R pupil, and for a prolonged period in routine treatment helped relieve the trauma to the jaw, until aananunced, he deviated from routine treatment at the time he noted verbally unprecedented progress, and with an indelible expression beyond description, he proceeded to twist plaintiff's knee, lift the ankle against it without stabilizing the pelvis, and thus dislodging it from its normal, healthy aligament.

In defendant-doctor's view, plaintiff's "crime" was the effect of translating laws of physics, of matter in motion, directly to the human anatomy which enhanced and developed progressive symmetry, and he did not believe in human symmetry, that it is not found and should not be taking place./N HUMAN BEINGS.

In defendant-judges view, plaintiff's "crime" was that she was appearing pro se. The reasons didn't matter to them, they never asked. But they let it be known in no uncertain terms how they felt about personal appearance and used, rather abused, their power from the bench to launch into a concentrated effort to deny plaintiff the right to be heard. Their written court orders make no effort to hide the fact. Defendant-judge Weiss signs the order to strike plaintiff's case from the calendar without letting plaintff state that it was a non-existent order, and later writes another order not before him for any reason referring the issues to defendant-judge Schwartz. And in a decorum far removed from court-room practice, literally shouted at plaintiff to "Go get a lawyer", running quite parallel to defendant-judge Schwartz' words stated in chambers to "TAKE UP SOME RELIGION, LAWYERS GOT TO LIVE", in addition to his many order, three written in one day only, with no reason or provocation, denying any and all relief sought by plaintiff

regardless of the many compliances, undeniable and unarguable compliances.

The constrictions faced upon a body to keep it from moving freely and the constrictions imposed by denying the fundamental rights of liberty to be heard inexorably lead to frustrations of such accretions that life is threatened from either perspective, legal and medical. The circumstances afford a glimpse of what our forebears historically meant to convey in such words as give me liberty or give me death, in the fight from tyranny, from abuse of power. Surely, there must be a relevancy to the need of the body to move to sustain life, the freedom to move the physical body without which there is no life, and the freedom to speak, to be heard in redress from wrong, the libery allowed by law to be able to move about with freedom of expression.

Defendant-doctor robbed plaintiff of normal, physical vitality to do independent work, not as a happenstance, or negligence, but with deliberateness to do harm; this surely is a denial of plaintiff's right to be free to move in the pursuit of life itself, and in the free-lancer's world, it can be taken literally, for that is the free-lancer's only asset.

Defendant-judges robbed plaintiff of normal, legal health leaving no doubt of their objection AND PREJUDICE AGAINST personal appearance, a prejudice so concentrated, that defendant-judge Weiss threatned plaintiff with

criminal action for seeking to restore to calendar with motions after each succeeding compliance of demand and mandates, CITING CALIFORNIA PRECEDENCES FROM THE BENCH, and defendant-judge Schwartz threw plaintiff's written request for discussion to the floor right before plaintiff with intense anger, saying he had decided and had nothing more to say or do, yet went on to write further orders despite the contradictions in the record, and kept the file in chambers inaccessible to plaintiff.

Plaintiff assiduously appealed in the State courts, and was denied every appeal, affirming the lower courts, regardless of the submitted documents plainly proving the facts, that there was out-and-out official misconduct in striking plaintiff's case off the calendar from an alleged order that was never issued, that a bill of particulars was verified, yet alleged as not verified by defendant-judges, etc.

However, denial of plaintiff's appeals does not and could not change the facts on record. What it does say in affirming the lower courts' decisions is that the unrepresented, solitary individual was denied fundamental CONSTITTUTIONAL rights in the State Courts. No one can seriously consider that the CONSTITUTIONAL mandates meant

that protecting the rights of the individual was aimed only at those with legal representation, that the unallied individual with no affiliations is precluded of those mandated protections. Without that understanding, we have no Constitution to adhere to to be in effect and to be effective. There must surely be myriad , untold reason to match individual circumstances for the need to appear pro se, and surely there are not so many appearing to threaten seriously the earning power of the vast array of lawyers who have more than one type of skill for seeking their avenues of bringing in money. One sole pro se can hardly be considered an intrusion in a sea of legal power and can hardly be denied our hard-won privilege of equal justice under the law.

Incredible as it may seem, defendant-judges' prejudice against pro se has been seen to be so intense as to extend their abuse of court power to inflicting aggravation upon plaintiff's physical injuyr in compelling plaintiff to make arduous, aggravating trips of torment to court without warrant, knowing of that physical hardship, having the medical and hospital records submitted to them in exhibits with plaintiff's briefs. The facts boggle the fundamental CREDIBILITY/ civilized progress of human decency.

Such events beg the questions:

Did we or did we not have a Declaration of Independence from the rule of tyranny, of one-man power? Did we or did we not proclaim the right of the individual to seek redress, the right to trial, regardless of status or stature?

Defense argues the principle of comity and judicial immunity, citing precedences of judicial "errors".

Well, there are no "errors" in the instant issues, and the principle of comity can hardly supercede the threat to life itself.

The issues are those of deliberate malice among the defendants, all of them, doctor and judges, and the evidence is irrefutable, inesapable, malice practiced with professional skill against an untrained individual, like kicking one when one is down. There just aren't any errors involved in any instance; the physical injury was done with practiced skill and full knowledge of what was being done; the ~~ingni~~ violations of the law was done with full knowledge of the law, of its being breached from its very roots.

The attendant tragedy to such abuse of power, medical and legal, is much more far reaching than the victimized individual. It works

against society, other individuals, including this Court, and including also, defendants themselves. Plaintiff's work in the TENSION-in-REPOSE PROGRAM has had medical merit, requiring patience AND TIME to continue finding means to establish its efficacy for wide exposure to all persons, as it is sound, natural science to which each one of us is subject. In denying plaintiff physical health and legal recourse, as defendant-doctor and defendant-judges have done, and thereby denying the time and ability to proceed with the beneftis of the program, defendants' own welfare has been jeopardized, for in the long run, every human being on earth has the routine DAILY task of dealing with tensions, and the natural technique of Tin-R as practiced by natural creatures as animals and babies but not by human adults, inevitably includes defendants' own need to safely deal with tensions which are part of everyone's life.

It therefore becomes an effrontery to ~~that~~ humanity and to the Constitution our forebears sacrificed so much to give us as their legacy to permit the viciousness of thedefendants to be unaccountable; in their position of power, defendants showed annoyance at plaintiff's insistence upon fundamental rights. If one gives up the right to pursue justice, one gives up the right to the dignity inherent in life, in the breath of life itself, and the dignity of the Constitution inherent in its mandates

What is on trial here in these issues is the CONSTITUTION itself and the rights of the indivudal to be protected against official misconduct and the tyranny of power as well as the exploitation of trust placed in a treating doctor who engages in PREMEDITATED serious injury threatening life.

The State Courts did not protect plaintiff's rights, and, therefore, did also violate Constitutional mandates. From early on, we have learned that the fundamental laws of the land must transcend State laws, though in the instant matter, no laws are in question, only their violations, both State and Federal, and as State courts neglected to uphold both State and Federal laws, then the Federal court, as guardian of the Constitution, must be looked to for protection of these fundamental rights granted to each of us in the land across the Nation.

Comity and immunity are not involved; it's just a matter of plain well-known rights of the land, laws of the land, laws to which it has been said even of a former president that no man is above the law. When a president of the Nation is held accountable, how could those who are not presidents of the Nation not be held accountable?

The violations are a matter of record. Can an untrumpeted indivdual expect less than has been afforded public figures, to be compelled to endure violations of the laws of the land without accountablity?

There can be no retreat from tyranny wherever it arises; if there were and our ancestors had shrunk from the tyranny of the days of our Revolution for independence from it, then we here now would not have the privileges our Constitution grants each one of us.

There is wholesale evidence of such tyranny against plaintiff, irrefutalbe and beyond a shddow of doubt. It is not a question of whether or not plaintiff's rights have been violated. They have been violated blatantly, ignoxminiously, cruelly, and with no concern for life itself.

It is a matter of the sanctity of law and life; it is a matter of accountability with rectification of the injustices done.

There is a simple, if noble-sounding stand, based on the conviction of the sanctity of law and life, that a line must be drwan to when the cruel deeds, repeated over and over without cessation, must be held accouttable, that each person must be held responsbble for those deeds.

Surely, a Declaration of Conscience must preside over the facts on their due merit, as they are being presented here before this Court as guardian of the Constitution and the mandates therein, for justice to be served, in whatever way is open to this Court.

Surely, our laws of the land were not established to permit and to promote deliberate official misconduct or to sanction deliberate, severe injury without recourse to be heard on those facts.as they are on rrcord.

To deem anyone above the law is to invite anarchy, with or without subterfuge and all the past sacrifices for freedom from oppression would well have been in vain.

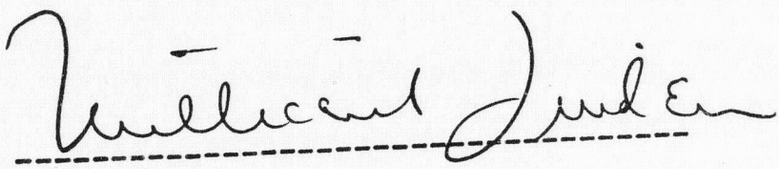
Defendant-doctor did inflict physical injury upon plaintiff just as the records document in defendant-dcotor's own words under oath, and plaintiff has never been heard on this evidence in court before a trial by jury.

Defendant-judges did violate the laws of the land and the State courts did affirm those violations, thus denying plaintiff our most ufndamental rights under the direct mandates of the Constitution to be heard in a trial by jury where the evidence is overwhelming and warrants that right to be heard.

For the foregoing statements, and for the full facts on record fully documented as stated, as true statements of fact, plaintiff

respectfully requests that this Court grant plaintiff those rights to be heard in trial against defendant-doctor and hold defendant-judges responsible and accountable for those violations of plaintiff's rights under the Constitution.

Plaintiff respectfully thanks this Court for their time.



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C/A Docket No 77 - 7162

Index No. 76 Civ. 4403
Judge Duffy

UNITED STATES COURT OF APPEALS
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MILLICENT LINDEN,

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- v -

DAVID FOX and SAMEUL GRAFF

Defendant-Appellees.

SUPPLEMENT

Millicent Linden
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